

# MEMORANDUM

December 1, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MARK A. WEINSTEIN, ESQ.  
Veatch Huang

BRIAN T. CHU  
Principal Deputy County Counsel  
General Litigation Division

RE: Richard Kado v. County of Los Angeles, et al.  
Yolo Superior Court Case No 02AS07969

DATE OF  
INCIDENT: March 28, 2002

AUTHORITY  
REQUESTED: \$75,000

COUNTY  
DEPARTMENT: District Attorney's Office

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## CLAIMS BOARD ACTION:



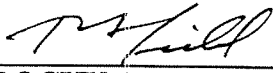
Approve




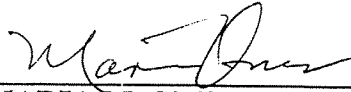
Disapprove



Recommend to Board of  
Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY A. ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on December 18, 2006

## SUMMARY

This is a recommendation to settle for \$75,000 the lawsuit brought by Richard Kado seeking damages for personal injuries sustained in a motor vehicle accident with an employee of the Office of the District Attorney on March 28, 2002.

## LEGAL PRINCIPLE

A public entity is responsible for the negligent acts of its employees when the acts are done with the use of its motor vehicle.

## SUMMARY OF FACTS

This is an automobile versus automobile accident that occurred on March 28, 2002, at approximately 7:10 a.m., on East Covell Boulevard near its intersection with Poleline, in the City of Davis, California. Richard Kado was driving his 1995 Mercury Cougar eastbound on East Covell Boulevard. Traveling in the westbound direction was a County employee driving a County vehicle preparing to make a left turn into a private driveway. The weather and road conditions were clear. The County employee is assigned to the County's Legislative Advocacy Unit in Sacramento.

The County employee proceeded with his left turn from the westbound direction at a speed of 10 to 15 miles per hour and directly into the path of Mr. Kado's vehicle. Mr. Kado attempted to brake and swerve into the adjacent lane, but could not avoid the ensuing collision with the County's vehicle.

A traffic investigation conducted by a Davis police officer at the scene indicated that the County employee was at fault for making an unsafe left turn. The County employee was cited for the traffic violation.

## DAMAGES

Mr. Kado received soft tissue injury to his right leg, neck and mid-lower back. He also complained of headaches. Mr. Kado was taken to a local hospital emergency room for examination and was prescribed pain and muscle relaxant medications. He was later diagnosed as having an exacerbation of a prior degenerative lumbar condition with a disc bulge at the L4-L5 vertebra. He claims to have been asymptomatic for the four months before the accident. Mr. Kado received lumbar and cervical epidural steroid injections for continuing pain, and he has been recommended for back surgery. A defense IME confirms the diagnosis, but rejects the viability of back surgery.

Should this matter proceed to trial, we anticipate Mr. Kado will offer evidence of damages as follows:

Past medical expenses	\$ 19,666
Future medical expenses	\$ 100,000
Pain and suffering	<u>\$ 100,000</u>
TOTAL	\$ 219,666

Mr. Kado's vehicle was repaired at a cost of \$6,228, which was previously paid by the County to Mr. Kado's insurance carrier.

## STATUS OF CASE

Because this accident occurred in Davis and both Mr. Kado and the County employee reside in Davis, this action was venued in the Yolo County Superior Court based on the convenience of the parties. This case was ordered to non-binding judicial arbitration, which took place on December 9, 2004, before an arbitrator in Woodland, California. The arbitrator rendered an award to Mr. Kado in the amount of \$73,440, plus costs. The County then filed a request for a new trial, and an unsuccessful settlement conference was held on February 6, 2006, in the Yolo Superior Court. Mr. Kado would not settle below \$97,000, while the County offered \$27,000.

The County subsequently served a statutory offer to settle the matter for \$75,000, which was accepted prior to the scheduled trial. The Court placed this case on its settlement status calendar pending final approval of the settlement.

Approximate expenses incurred by the County in defense of this matter are attorneys' fees of \$36,069.31 and costs of \$18,320.38. These expenses include costs for travel to take depositions and make court appearances in Northern California and retention of a medical expert to aid in the valuation of this case.

## EVALUATION

This is a case of undisputed liability. A jury is likely to find that there were no visual obstructions nor unusual conditions that would have impeded the view of Mr. Kado's vehicle from the westbound lanes. Mr. Kado was not speeding, and the evidence suggests that he attempted to avoid the collision. The only triable issue is the degree to which Mr. Kado's physical condition was exacerbated in the collision. While there is solid evidence that he had a pre-existing degenerative back condition, there is little evidence to support a defense contention that he sustained nominal exacerbation of the prior condition. The defense IME confirms the existence of injury, but there is a dispute as to whether future back surgery would relieve Mr. Kado's continuing back pain.

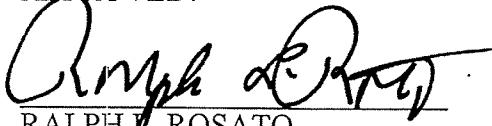
The arbitration award supports the conclusion that Mr. Kado sustained injury in the accident. However, the award reflected a reduction from past and future medical treatment and general damages claimed. A reasonable settlement of this action at this time, however, will avoid further litigation costs and a potential jury verdict that could exceed the proposed settlement.

This case was roundtabled on May 8, 2006, with defense counsel and representative staff from County Counsel, Carl Warren and the Office of the District Attorney attending. The unanimous recommendation was to settle this case for the proposed amount.

## RECOMMENDATION

We join our private counsel, Veatch Huang, and our third party administrator, Carl Warren & Company, in recommending a total settlement of this matter in the amount of \$75,000. The Office of the District Attorney concurs in this settlement recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read "Ralph L. Rosato", written over a horizontal line.

RALPH L. ROSATO  
Assistant County Counsel  
General Litigation Division

BC:ac